

REMARKS

Claims 1-3, 6-10 and 13, 14 and 17 are pending in this application. By this Amendment, claims 1, 6 and 8 are amended and claims 4, 5, 11, 12, 15 and 16 are canceled without prejudice or disclaimer. Support for the amendments to claims 1 and 8 can be found at least in Figs. 1 and 2 and paragraph [0041] of the application as published. No new matter is added.

Entry of the amendments is proper under 37 CFR §1.116 because the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issue requiring further search and/or consideration, as the amendments amplify issues previously discussed throughout prosecution; and (c) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

Claims 1, 4-9 and 15-17 are rejected under 35 U.S.C. §103(a) over Richmond et al. (U.S. Patent No. 6,990,592) in view of Ghys (U.S. Patent No. 7,076,039). The rejection is respectfully traversed.

Richmond and Ghys, even when combined, fail to disclose and would not have rendered obvious the claimed combinations of features recited in independent claims 1 and 8. For example, Richmond and Ghys fail to disclose and would not have rendered obvious "estimating a bit rate value for a set of initialization message packets comprising at least the received initialization message packet, the set of initialization message packets having been received by the monitoring server during a predetermined duration," combined with the other features of independent claims 1 and 8.

The claims are directed to a remote monitoring server (and method performed by the server) that analyzes only initialization message packets received from a router that separates

multimedia and SIP streams. The analysis is performed according to an estimated bit rate value for a set of initialization message packets received during a predetermined duration. Neither Richmond nor Ghys discloses or renders obvious the claimed features.

Richmond discloses a system for controlling the use of network resources at an entry point to the network by using packet rules that include a condition and an action to be taken if a packet satisfies the condition. The system of Richmond allows a packet rule to be defined and to examine any portion of the packet, such as an identifier of the packet sender or a logical port number. Packet rules may define actions such as assigning rate limiting, which allows for controlling a bandwidth assigned to a user so that the packet is dropped when the limiting rate is reached. Richmond discloses a controlling system implemented at a user's entry point so as to control the user's communication settings without using any network resources other than the user's entry point to the network (see, e.g., col. 13, lines 34-62 of Richmond). The system must be implemented at an entry point so as to monitor each of the exchange packets. Indeed, if the above system were implemented in a remote network server, the network could be saturated based on the packets being transmitted from the entry point to the remote network server.

Ghys discloses a method for call charging in a data transmission system that includes a transport network and a call server that controls communications sessions over the transport network based on the use of signaling messages. To avoid the theft of service, signaling messages are analyzed to determine the amount of non-signaling information and a call server thereafter processes the amount of non-signaling information to determine the appropriate charge. In particular, Ghys discloses determining the amount of non-signaling information by determining the amount of data, in each transmitted initialization message packet, that exceeds a predetermined amount of data representing a maximum allowable amount of signaling data. The disclosed method is implemented within the remote network server

(referred to as a call server in Ghys) so as to analyze only initialization message packets. However, the system of Ghys must be implemented in a remote network server so as to monitor only the initialization message packets and not the other packets that are billed according to a standard method.

Even if the systems of Richmond and Ghys are combined, the resulting combination would only achieve:

- a first system implemented at an entry point for controlling the bandwidth allocated to a particular user so as to drop all of the excess packets by comparing a bit rate with a first threshold; and
- a second system implemented in a remote network server for estimating an amount of data to bill corresponding to an amount of data that exceeds a second predetermined threshold.

As discussed above, the first and second systems resulting from combining the references must be distinct from one another.

Further, such a combination does not achieve the features recited in independent claims 1 and 8 because those claims use a single threshold for discarding initialization message packets received from a router, in a remote network server, according to a reception bit rate that is estimated over a predetermined duration.

Further, one of ordinary skill would not have been motivated to combine the teachings of Richmond and Ghys as proposed by the Office Action. By combining the teachings of Richmond and Ghys (i.e., by modifying the teachings of Ghys so as to charge a client on the basis of a bit rate evaluation) bit rates would be estimated over measured time periods so as to calculate an amount of data to be billed. Such a combination would only achieve a system much more complex than that disclosed in Ghys without any benefit to outweigh the burdens of the complexity. Therefore, one of skill in the art would not consider estimating bit rate

values in combination with Ghys so as to allegedly achieve the features of independent claims 1 and 8.

Further, the amount of data used for billing is estimated, according to Ghys, on a single packet basis (see Abstract of Ghys). In contrast, independent claims 1 and 8 perform bit rate estimation according to a set of initialization message packets (i.e., one or more initialization messages) received during a predetermined duration.

As previously argued during the prosecution of this application, Richmond and Ghys are directed to different problems and as such, one of ordinary skill would not have combined the teachings of Richmond and Ghys. That is, even though Richmond and Ghys are both directed to transmission of data over a communication network, the solutions of Richmond and Ghys are contradictory in the sense that Richmond is directed to shared network resources for dropping packets that exceed a predetermined duration while Ghys is directed to billing as much data as possible. The system of Ghys would lose money if packets containing billable data were dropped based on the threshold disclosed in Richmond. As a result, one of ordinary skill in the art intending to improve the system of Ghys would not have combined the teachings of Ghys with those of Richmond, and *vice versa*.

For at least these reasons, independent claims 1 and 8 are patentable over Richmond and Ghys. Claims 4-7, 9 and 15-17, which variously depend from independent claims 1 and 8, are also patentable for at least their dependency on independent claims 1 and 8, as well as for the additional features they recite. Withdrawal of the rejection is respectfully requested.

Claims 2, 11 and 13 are rejected under 35 U.S.C. §103(a) over Richmond in view of Ghys and further in view of Vaid et al. (U.S. Patent No. 6,502,131); claims 3, 12 and 14 are rejected under 35 U.S.C. §103(a) over Richmond in view of Ghys and further in view of Official Notice; and claim 10 is rejected under 35 U.S.C. §103(a) over Richmond in view of

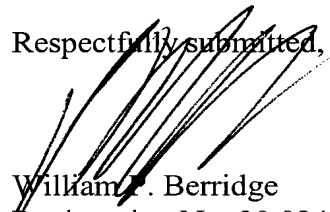
Ghys and further in view of Vaid and Official Notice. Applicants respectfully traverse the rejections.

Claims 2, 3 and 10-14 depend from independent claim 1, and are patentable for at least their dependency on independent claim 1, as well as for the additional features they recite. Withdrawal of the rejections is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,


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